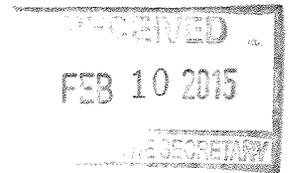


ORIGINAL

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16195



UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

JUDY K. WOLF,

Respondent.

Judge Cameron Elliot

**DIVISION OF ENFORCEMENT'S
OBJECTIONS TO RESPONDENT'S
WITNESS STEVEN M. SALKY**

The Division of Enforcement ("Division") hereby objects to the following witness identified by respondent Judy K. Wolf ("Wolf") on her Witness List: Steven M. Salky.

Mr. Salky is Wolf's counsel of record. As a general proposition of attorney ethics, a lawyer should not be a witness for his client.¹

It is not apparent from either Wolf's Answer to the Order Instituting Proceedings ("OIP") or from her Exhibit List filed what subject(s) Mr. Salky is expected to testify on. The Division's counsel conferred with Wolf's co-counsel, Steven Herman, who represented that Mr. Salky may be

¹ Rule 3.7 of the American Bar Association Model Rules of Professional Conduct states: (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client. (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

called to testify at the hearing regarding communications Mr. Salky and Mr. Herman had with Division staff on April 24, 2013 – six weeks after Wolf’s initial testimony where she falsely denied altering documents and several weeks after the falsity of Wolf’s testimony had been disclosed to the Division by Wells Fargo’s counsel – in which Mr. Salky purportedly advised the staff that Wolf had “erred” in her prior testimony and that she made certain incorrect assumptions at the time of her initial testimony regarding the integrity of the documents in question in light of her usual practices.

Wolf will be a witness at the hearing, likely called by both sides, and is perfectly capable of offering whatever *post-hoc* explanation she likes for her false testimony on April 24, 2013. There is no reason that Wolf should be allowed to present her story twice by calling one of her defense counsel to testify about a conversation defense counsel had with the Division staff concerning her prior testimony, in which defense counsel would seek to simply repeat Wolf’s explanation for why she testified that way she had. Furthermore, the timing of defense counsel’s communication with the staff is entirely irrelevant, as the staff had already been advised weeks earlier by Wells Fargo’s counsel that the metadata associated with Wolf’s insider trading review log had been altered in late December 2012, over two years after Wolf’s insider trading review concerning Burger King securities. By the time of defense counsel’s communication with the staff, the “cat was out of the bag,” and, hence, Wolf has every reason to fabricate an innocent excuse for why her prior testimony had been incorrect, in order to suggest that her prior testimony had been a simple mistake, rather than a knowing and deliberate lie. Thus, Wolf’s statements to defense counsel, or counsel’s statements to the Division staff concerning what she may have told him, would not be admissible as a prior consistent statement under Rule 801(d)(2) of the Federal Rules of Evidence,

as the motive to fabricate was already present. Accordingly, Mr. Salky's proffered testimony is both rank hearsay and wholly irrelevant.

The proffered testimony also would violate the witness-advocate rule, and likely result in a wholesale waiver of the attorney-client privilege between Wolf and her counsel, thus opening the door to a far reaching cross-examination about everything Wolf may have told her counsel regarding her prior testimony, as well as her underlying conduct in 2010 and 2012. There is no reason to engage in such an unfettered side show. *See* FRE 403(excluding even relevant evidence where it is cumulative and would cause confusion and wasting time).

For the foregoing reasons, the Division objects to Wolf calling her counsel, Steven Salky, to testify in this matter.

DATED: February 9, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT
By its Attorneys:

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